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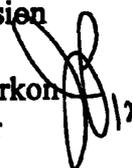
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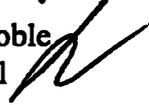
March 3, 2000

MEMORANDUM

**AGENDA ITEM**  
For Meeting of: 3-16-00

TO: The Commission

THROUGH: James A. Pehrkon   
Staff Director

FROM: Lawrence M. Noble   
General Counsel

N. Bradley Litchfield   
Associate General Counsel

Jonathan M. Levin   
Senior Attorney

SUBJECT: Revised Draft AO 1999-40

At the Open Session of March 2, 2000, the Commission considered a draft response to Advisory Opinion Request 1999-40, as presented in Agenda Document #00-25, along with a proposed amendment in Agenda Document #00-25-A. The Commission instructed this office to draft an additional amendment addressing contributions by joint members. The draft opinion with both amendments is attached. The amendments appear as footnotes 12 and 13 on page 12, and are in bold type. The amended draft is being circulated for Commission approval on a 72-hour tally vote basis.

Attachment

1 **ADVISORY OPINION 1999-40**

2  
3 **Jan Witold Baran**  
4 **Wiley, Rein & Fielding**  
5 **1776 K Street, N.W.**  
6 **Washington, D.C. 20006**

7  
8 **Dear Mr. Baran:**

9       **This responds to your letter dated December 29, 1999, as supplemented by your**  
10 **letters dated February 7, 14, and 23, 2000, on behalf of the National Rural Electric**  
11 **Cooperative Association (“NRECA”) and the Action Committee for Rural Electrification**  
12 **(“ACRE”), requesting an advisory opinion concerning the application of the Federal**  
13 **Election Campaign Act of 1971, as amended (“the Act”) and Commission regulations to**  
14 **the ability of ACRE to solicit the members of NRECA’s distribution member**  
15 **cooperatives and to utilize the cooperatives’ billing systems to collect voluntary**  
16 **contributions.**

17 ***Factual background***

18 ***NRECA’s structure and membership***

19       **NRECA is a nonprofit corporation formed under the District of Columbia**  
20 **Cooperative Association Act. It was established**

21       **To engage in the compilation and dissemination of information with**  
22 **respect to rural electrification and the furnishing of other services to rural**  
23 **electric cooperatives and others in connection with the coordination,**  
24 **advancement and development of rural electrification in the United States**  
25 **... for the primary and mutual benefit of the patrons of the Association**  
26 **and their patrons, as ultimate consumers.**

27  
28 **NRECA Articles of Incorporation, Article I. ACRE is NRECA’s separate segregated**  
29 **fund (“SSF”) and is registered with the Commission as a multicandidate committee.**

30       **Comments in 1998 and 1999 submitted by counsel to NRECA with respect to**  
31 **proposed Commission rules on membership describe NRECA as a “national service**  
32 **cooperative owned by and representing” approximately 1,000 rural electric systems which**  
33 **provide electricity to more than 30 million consumer-owners in 46 States. The comments**  
34 **state that NRECA’s owners are “a complex federated system of local, state, regional, and**  
35 **national cooperatives.” Over 900 of the approximately 1,000 owner-cooperatives are**

1 operational cooperative utilities that are eligible for assistance under chapter 31 of title 7  
2 of the United States Code (i.e., distribution cooperatives and generation and transmission  
3 cooperatives). The remainder consists generally of State and regional service entities that  
4 are "affiliate membership organizations" of NRECA's member utilities.

5 The above-described group consists of three types of voting members, each of  
6 which pays an initial membership fee and annual dues to NRECA. NRECA Bylaws,  
7 Article I, §§1.a and 2. One class of voting members is the distribution members, and the  
8 other two types of voting members of NRECA are generation and transmission members  
9 and service members.

10 The distribution members are the focus of this opinion and are described as  
11 follows:

12 Electric distribution cooperatives or nonprofit associations, nonprofit  
13 corporations, public utility districts, and government corporations or  
14 authorities located in a state, territory, possession, or commonwealth of the  
15 United States and engaged in furnishing electricity at retail to their  
16 consumers.

17  
18 NRECA Bylaws, Article 1, §1.a(1).<sup>1</sup> Each distribution member that is a local cooperative  
19 also has members, almost all of whom are individuals who pay a membership fee to  
20 belong to the local cooperative.<sup>2</sup> A member in the local cooperative purchases his or her  
21 electrical services from the cooperative and is billed monthly.

22 To become a distribution member of NRECA, an entity such as a cooperative  
23 must apply to the NRECA Board of Directors. Approval is granted by NRECA's top  
24 officers only after the applicant has paid the membership fees, dues, and a subscription  
25 rate for *Rural Electrification* magazine, and has agreed to be bound by the bylaws and  
26 articles of incorporation. NRECA Bylaws, Article I, §3. A distribution member pays

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<sup>1</sup> The more than 60 generation and transmission members are cooperatives or other nonprofit entities which, according to the above-referenced comments, are owned by and serve 778 of the nearly 900 distribution members. They are engaged in the marketing, generation, or transmission of wholesale bulk electricity for sale to others for the purpose of resale. The service members are associations, including 36 rural statewide associations, whose members consist of generation and transmission, or distribution cooperatives or associations. NRECA's website describes service members as "the glue that unites members in a single voice in their state," providing representation before State legislatures, a publication sent to consumer-owners, "or any of the services that can be achieved united as one."

1 annual dues to NRECA in an amount that is the greater of \$750 or a total based on the  
2 member's operating revenue, the cost of power, the number of consumers, and the  
3 number of megawatt hours sold. The member also pays for subscriptions to *Rural*  
4 *Electrification* for each of its key officers and staff members. NRECA Bylaws, Article I,  
5 §2.

6 NRECA's bylaws provide that its business and affairs shall be managed by a  
7 board of directors and an executive committee, which acts for the board during the  
8 intervals between board meetings and subject to policies agreed upon by the board.  
9 Bylaws, Article III, §1 and Article V, §4. The membership or board of each voting  
10 member selects one of its members, directors, or employees to be its delegate to  
11 NRECA's annual meeting and to State and regional meetings of the members. Bylaws,  
12 Article II, §5. The delegates of the distribution members and the generation and  
13 transmission members select the board and vote on other matters. The members located  
14 in each State elect a person who is a member, employee, officer, or director of a member  
15 in that State to serve on the board. Bylaws, Article II, §6 and Article III, §§3 and 4.<sup>3</sup>

16 *Distribution member's structure and membership*

17 You have enclosed the bylaws of two distribution members to serve as examples  
18 of the local cooperatives. They are the Southern Maryland Electric Cooperative, Inc.  
19 ("SMEC") and the Rappahannock Electric Cooperative ("REC"). The membership of  
20 each of the cooperatives consists of persons who purchase, from the cooperative, all the  
21 electric energy to be used on specific premises. The bylaws denote requirements for  
22 membership, including an agreement to purchase electric energy from the cooperative in  
23 accordance with the bylaws, and an agreement to comply with the articles of  
24 incorporation, bylaws, and other rules of the cooperative. SMEC Bylaws, Section 1.01;  
25 REC Bylaws, Article I, §1. REC bylaws provide for the issuance of a membership  
26 certificate, while SMEC bylaws state that membership is evidenced by compliance with

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<sup>2</sup> A few distribution members are not cooperatives. Your request seeks an opinion with respect to distribution members that are cooperatives, and you do not seek an opinion with respect to the members of any other members of NRECA.

<sup>3</sup> NRECA is also divided into ten regions, each consisting of several States. The board members from each region choose a director to be an executive committee member for that region.

1 the membership requirements section, including having a service connection. REC  
2 Bylaws, Article 1, §2; SMEC Bylaws, Section 1.02.

3 The bylaws of both cooperatives provide that the business and affairs of the  
4 cooperative shall be managed by the board of directors. SMEC Bylaws, Section 4.01;  
5 REC Bylaws, Article IV, §1. In each organization, members of the board are elected by  
6 the members of the cooperative at the annual meeting of the members. SMEC and REC  
7 Bylaws, Articles III and IV.

8 *Capital credits of members of distribution cooperatives*

9 As nonprofit organizations, most cooperatives allocate, to their members, amounts  
10 paid by the members in excess of operating costs and funds needed by the cooperative for  
11 reserve funds. These excess amounts are often referred to as "capital credits" and are  
12 allocated to an account in the name of each member on an annual basis.<sup>4</sup> Once allocated,  
13 the cooperative may not change the amount of capital credits in the member's account.  
14 The cooperative retains some discretion as to when to "retire" (i.e., return) these credits to  
15 the members.<sup>5</sup> You state that the cooperative's board of directors declares whether  
16 capital credits will be "retired" and thus issued to the members, and, in general, may only  
17 retire capital credits if the retirement will not adversely affect the cooperative's financial  
18 condition. Once the board of directors retires allocated capital credits to members, those  
19 members have a vested legal right in those credits. The retired capital credits are  
20 distributed to members either as a credit on a bill issued subsequent to the retirement  
21 declaration or as a check mailed to the member. The board determines the method of  
22 distribution.<sup>6</sup> If there is a credit on the member's bill, the member may use the amount to  
23 reduce her monthly electricity payments.

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<sup>4</sup> The amount allocated to each member is based upon and proportionate to the value or quantity of business that the member did with the cooperative during the year. The bylaws of SMEC and REC provide that at the end of the fiscal year, the excess amounts (if there are any) furnished by each member are credited in an appropriate record to the capital account of the member. SMEC Bylaws, Section 7.02; REC Bylaws, Article VII, §2.

<sup>5</sup> You state that electric cooperatives generally retain allocated capital credits for a specified time to assist in operations.

<sup>6</sup> SMEC's website further illustrates that the retired capital credits are the property of the member. It states that when a customer (i.e., member) discontinues service with SMEC, the customer must give SMEC a current mailing address and notify it of subsequent address changes so that capital credit refunds can continue to be sent to the customer. Moreover, if a customer dies, SMEC needs to be notified by a relative or representative so that the capital credits can be refunded to the deceased customer's estate.

**1 Proposal**

2           You state that NRECA wishes to engage in a program to solicit, in writing, the  
3 members of the local cooperatives for contributions to ACRE and have the cooperatives  
4 act as the collecting agents for the contributions. Specifically, each member of a  
5 cooperative who wishes to voluntarily participate in the program would pre-authorize the  
6 local cooperative to include, on the monthly bill to the member, a line item for the  
7 amount of the pre-authorized ACRE contribution. Payments would be made to the local  
8 cooperative which would then forward the collected contributions to ACRE directly or  
9 through a state association (i.e., a service member) within 10 or 30 days as required by 11  
10 CFR 102.8.

11           NRECA and ACRE also wish to engage in an additional program whereby  
12 voluntary contributions would be deducted from the member's retired capital credits.  
13 Prior to the distribution of the capital credits to the member, NRECA, through the local  
14 cooperative, would solicit an authorization for deduction from the consumer member and  
15 the local cooperative would reduce the amounts of the member's retired credits based on  
16 the pre-authorized deduction. In a situation where the capital credits were to be  
17 distributed by check, the amount of the check would be reduced by the authorized  
18 amount. Where the credits appear on the bill for use by the member, the amount of the  
19 credits would be reduced by the authorized amount.

20           In soliciting the authorizations and accepting the contributions to ACRE, NRECA  
21 and the local cooperatives will take certain measures to ensure that only personal funds  
22 and no corporate funds will be used for the contributions. Generally, the local  
23 cooperatives classify their membership into at least three categories: residential,  
24 commercial, and industrial. Only residential members will be solicited. Residential  
25 members using capital credits for their contributions will be asked to affirm that all of  
26 their previous bill payments to the cooperative were made with personal (non-corporate)  
27 funds. Residential members making contributions to ACRE in combination with  
28 payments of their electric bill amount will be asked to affirm that the payments are from  
29 personal (non-corporate) funds. In all solicitations, a clear disclaimer that corporate  
30 funds are not permitted will be included.

1           You ask whether the local cooperatives may collect contributions by either of the  
2 methods described above.

3 ***Act and Commission regulations***

4           The Act prohibits corporations from making any contribution or expenditure in  
5 connection with a Federal election. 2 U.S.C. §441b(a). The Act states, however, that the  
6 term "contribution or expenditure" does not include "the establishment, administration,  
7 and solicitation of contributions to a separate segregated fund ("SSF") to be utilized for  
8 political purposes by a corporation, labor organization, membership organization,  
9 cooperative, or corporation without capital stock." 2 U.S.C. §441b(b)(2)(C); see also 2  
10 U.S.C. §431(8)(B)(vi) and (9)(B)(v). An organization such as a corporation, or an  
11 incorporated membership organization or cooperative, which is not itself a political  
12 committee, but which directly or indirectly establishes, administers or financially supports  
13 a political committee is a "connected organization" of that committee. 2 U.S.C. §431(7);  
14 11 CFR 100.6(a). A connected organization or its subsidiary, branch, division,  
15 department or local unit is permitted to act as a "collecting agent" for the SSF and thus  
16 may collect and transmit contributions to the SSF without thereby becoming a political  
17 committee. 11 CFR 102.6(b)(1)(ii) and (iii), and 102.6(b)(2).<sup>7</sup>

18           The connected organization and its SSF are subject to restrictions as to the  
19 personnel who may be solicited for contributions to the SSF. An incorporated  
20 membership organization or cooperative may solicit voluntary contributions to the fund  
21 from its executive and administrative personnel, its members, and the families thereof. 2  
22 U.S.C. §441b(b)(4)(A) and (C); 11 CFR 114.1(j) and 114.7(a). Commission regulations  
23 define a "membership organization" as a trade association, cooperative, or corporation  
24 without capital stock that:

- 25           (i) Is composed of members, some or all of whom are vested with the  
26 power and authority to operate or administer the organization, pursuant to  
27 the organization's articles, bylaws, constitution or other formal  
28 organizational documents;  
29           (ii) Expressly states the qualifications and requirements for membership in  
30 its articles, bylaws, constitution or other formal organizational documents;

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<sup>7</sup> The two other permissible categories of collecting agents are a committee affiliated with the recipient SSF and a local, national, or international union collecting contributions for the SSF of a labor federation with which the union is affiliated. 11 CFR 102.6(b)(1)(i) and (iv).

- 1 (iii) Makes its articles, bylaws, constitution, or other formal organizational
- 2 documents available to its members upon request;
- 3 (iv) Expressly solicits persons to become members;
- 4 (v) Expressly acknowledges the acceptance of membership, such as by
- 5 sending a membership card or including the member's name on a
- 6 membership newsletter list; and
- 7 (vi) Is not organized primarily for the purpose of influencing the
- 8 nomination for election, or election, of any individual to Federal office.

9  
10 11 CFR 114.1(e)(1)(i-vi); see also 11 CFR 100.8(b)(4)(iv)(A)(1)-(6).

11 The term "members" includes all persons who are currently satisfying the  
12 requirements for membership in a membership organization, affirmatively accept the  
13 membership organization's invitation to become a member, and either:

- 14 (i) Have some significant financial attachment to the membership
- 15 organization, such as a significant investment or ownership stake; or
- 16 (ii) Pay membership dues at least annually, of a specific amount
- 17 predetermined by the organization; or
- 18 (iii) Have a significant organizational attachment to the membership
- 19 organization which includes: affirmation of membership on at least an
- 20 annual basis and direct participatory rights in the governance of the
- 21 organization. For example, such rights could include the right to vote
- 22 directly or indirectly for at least one individual on the membership
- 23 organization's highest governing board; the right to vote directly for
- 24 organization officers; the right to vote on policy questions where the
- 25 highest governing body of the membership organization is obligated to
- 26 abide by the results; the right to approve the organization's annual budget;
- 27 or the right to participate directly in similar aspects of the organization's
- 28 governance.

29  
30 11 CFR 114.1(e)(2)(i)-(iii); see also 11 CFR 100.8(b)(4)(iv)(B)(1)-(3).

31 Commission regulations also provide that members of one tier of a multi-tiered  
32 organization may be members of the affiliates of the organization, including the highest  
33 tier, even if they may not have rights and obligations with respect to the highest tier.

34 They provide:

35 In the case of a membership organization which has a national federation  
36 structure or has several levels, including, for example, national, state,  
37 regional and/or local affiliates, a person who qualifies as a member of any  
38 entity within the federation or of any affiliate by meeting the requirements  
39 of [11 CFR 114.1(e)(2)(i), (ii), or (iii)] shall also qualify as a member of  
40 all affiliates for purposes of this part. The factors set forth at 11 CFR

1 100.5(g)(2), (3) and (4) shall be used to determine whether entities are  
2 affiliated for purposes of this paragraph.<sup>8</sup>  
3

4 11 CFR 114.1(e)(5); see also 11 CFR 100.8(b)(4)(iv)(E).

5 Commission regulations make special provisions with reference to rural  
6 cooperatives such as those addressed in this opinion, as follows:

7 A federated cooperative as defined in the Agricultural Marketing Act of  
8 1929, 12 U.S.C. 1141j, or a rural cooperative eligible for assistance under  
9 chapter 31 of title 7 of the United States Code, may solicit the members of  
10 the cooperative's regional, state or local affiliates, provided that all of the  
11 political committees established, financed, maintained or controlled by the  
12 cooperative and its regional, State or local affiliates are considered one  
13 political committee for the purposes of the limitations in 11 CFR 110.1  
14 and 110.2.  
15

16 11 CFR 114.7(k)(1). This regulation was promulgated in 1993. In 1999, when the  
17 Commission revised the membership regulations and added the above regulation on  
18 federated membership organizations, the Commission reaffirmed the explicit coverage of  
19 rural cooperatives, and noted a concern stated by a commenter that the structure of most  
20 rural cooperatives does not readily correspond to the multi-tiered structure envisioned in  
21 11 CFR 114.1(e)(5). Explanation and Justification, *Definition of "Member" of a*  
22 *Membership Organization*, 64 Fed. Reg. 41266, 41271 (July 30, 1999).

23 *Analysis*

24 *NRECA and local cooperatives as membership organizations and as organizations of*  
25 *affiliates*

26 The Commission concludes that NRECA qualifies as a membership organization  
27 under the Act. It is composed of members who have the power to operate and administer  
28 the organization through delegates who have the right to select the board of directors and  
29 vote on other matters. NRECA's bylaws expressly state the qualifications for  
30 membership including descriptions of the eligible organizations and the dues  
31 requirements. The Commission assumes that the formal organizational documents are

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<sup>8</sup> The factors set forth at 11 CFR 100.5(g)(2), (3), and (4) are the criteria for determining whether an organization or its political committee is sufficiently related to another sponsoring organization or committee so that the committees must share contribution limits and the organization may solicit PAC contributions from, or make communications on any subject to, the restricted class of the other organization.

1 available to members upon request. NRECA's website promotes the benefits of  
2 membership and includes an application for associate membership, and the bylaws  
3 describe the application process for membership. NRECA expressly acknowledges  
4 membership in a number of ways, including the distribution of a magazine to members  
5 pursuant to mandatory subscriptions and notices of NRECA meetings that are sent to each  
6 member. Each distribution member qualifies as a NRECA member under the  
7 Commission regulations by affirmatively deciding to become a member and by paying  
8 annual pre-determined dues.

9       The local cooperatives are also membership organizations under the Act. They  
10 are administered by their members who elect the board of directors. The bylaws state the  
11 qualifications for membership, and the Commission assumes that the formal  
12 organizational documents are made available to the members upon request. SMEC's  
13 website discusses the benefits of being a member of the cooperative.<sup>9</sup> Membership is  
14 acknowledged by the issuance of a certificate or the maintenance of a service connection.  
15 Each member of the local cooperative also qualifies as a member under the regulations.  
16 Such a person affirmatively decides to become a member, affirms the membership  
17 frequently through the payment of monthly electric bills, and has the ability to vote  
18 directly for the board of directors.

19       NRECA taken together with its member cooperatives is also the kind of  
20 organization contemplated under 11 CFR 114.7(k)(1). NRECA is itself a cooperative  
21 owned by the member cooperatives. The category of service members includes State  
22 associations of cooperatives, and the State associations are characterized on the NRECA  
23 website in a manner that comports with a State affiliate relationship. Distribution  
24 cooperatives own the generation and transmission members, and both types of members  
25 are members of the service members. (See footnote 1.) The distribution cooperatives,  
26 although the most basic unit of membership within NRECA, consist of members who  
27 vote for the delegates to NRECA or for those who choose the delegates. NRECA  
28 explicitly recognizes that it operates for the benefit of the members of such cooperatives.  
29 In view of this structure and 11 CFR 114.7(k)(1), the distribution member cooperatives

1 and State associations are related State and local entities of a membership organization,  
2 NRECA, and thus are entities affiliated with NRECA. 11 CFR 100.5(g)(3)(iv) and  
3 110.3(a)(2)(iv).

4 *Implementation of proposal*

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5 Since the distribution cooperatives are local affiliates of NRECA, NRECA may  
6 solicit the members of the cooperatives for contributions to ACRE. As affiliates of  
7 NRECA, the distribution cooperatives and the State associations are local units that may  
8 act as collecting agents for contributions to ACRE. As a collecting agent, the cooperative  
9 may pay all costs of soliciting and transmitting contributions to the SSF. 11 CFR  
10 102.6(c)(2)(i).

11 The collecting agent procedures in Commission regulations provide that a  
12 contributor may combine a payment of dues or other fees with the contribution to the  
13 SSF. Specifically, the regulations refer to one check that a contributor may write,  
14 representing both the contributions and other fees, so long as it is drawn on the member's  
15 personal account. 11 CFR 102.6(c)(3). The Commission has also made clear that other  
16 vehicles such as credit cards or electronic transfers may be used for such combined  
17 payments. See Advisory Opinions 1997-9 and 1990-4. The cooperative may implement  
18 the program for combined payment of monthly electrical charges and a contribution to the  
19 SSF, subject to conditions set out below.

20 The full amount of each contribution collected by the cooperative must be  
21 transmitted to the SSF within 10 or 30 days of its receipt of the payment as required by 11  
22 CFR 102.8. 11 CFR 102.6(c)(4). Contributions of \$50 or less must be forwarded to the  
23 SSF's treasurer no later than 30 days after the receipt, and contributions above \$50 must  
24 be forwarded within 10 days. Moreover, for contributions in excess of \$50, the  
25 cooperative must forward to ACRE, along with the contribution, the date of receipt and  
26 the contributor's name and address. For contributions in excess of \$200, the cooperative  
27 must also forward the contributor's occupation and name of employer. 11 CFR

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<sup>9</sup> Membership in the distribution cooperative is often a necessity for a customer so the requirement of express solicitation of members may not be applicable.

1 102.8(b)(1) and (2).<sup>10</sup> In order to separate the contributions from the bill payments so that  
2 they may be transmitted to the SSF, the local cooperative (and the State association) must  
3 use one of two procedures. It may either establish a transmittal account to be used solely  
4 for the deposit and transmittal of funds collected on behalf of the SSF; or deposit the  
5 contributions in its treasury account and keep separate records of all receipts and deposits  
6 that represent contributions to ACRE. See, for example, Advisory Opinion 1990-4.

7 The Commission also concludes that the pre-authorized deduction in the amount  
8 of capital credits may be used for contributions by an individual member. According to  
9 your description, the capital credits that are declared and "retired" by the cooperative are  
10 the property of the member. They are either returned to the member in a check or usable  
11 by the member for reducing the payment of the electrical bill.<sup>11</sup> Because of the unique  
12 nature of capital credits, including the fact that they are not always declared and retired by  
13 the cooperative, the Commission makes a number of assumptions about the conduct of  
14 the deduction program. In its solicitations of pre-authorization for contributions, the  
15 cooperative should explicitly solicit for this type of deduction if it intends to implement  
16 such a program. If the solicitation for contributions from capital credits is done together  
17 with a solicitation for the combined payment program, it should require a separate  
18 authorization from the authorization for the combined payment program (e.g., checking a  
19 separate box with a separate signature.) The Commission also assumes that the bill or  
20 other document which informs the member of the capital credits retired by the  
21 cooperative will explicitly denote the deduction of the pre-authorized amount for the  
22 contribution to ACRE.

23 The Commission also conditions its approval of the two solicitation programs on  
24 the procedures you have described for ensuring that corporate contributions will not be  
25 received. This means that the local cooperative will need to require a donor statement

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<sup>10</sup> The receipt by the State association prior to the further transmittal to ACRE does not begin a new period for computing the time period. The time period is computed from the date of the local cooperative's receipt to the date of the receipt by ACRE's treasurer.

<sup>11</sup> You note that the reduction in the amount of a check for the payment of capital credits is similar to the situation in Advisory Opinion 1986-7. In that situation, an incorporated agricultural cooperative paid each of its individual grower/shareholders for their crop production. The Commission concluded that the cooperative could deduct contributions to its SSF from payments due from the cooperative, based on a pre-authorization signed by the member.

1 that a check containing a combined bill payment and ACRE contribution is made with  
2 personal funds, and such a statement should be included with each combined payment.<sup>12</sup>  
3 Furthermore, the solicitation for the authorizations should inform the member of the other  
4 prohibitions of the Act, as well as the corporate prohibition. In addition, the Commission  
5 understands that your requirement of affirmations by donors using capital credits, as to  
6 the funds used for their previous bill payments, means that the donor must make such an  
7 affirmation before each contribution deduction can be made from returned capital credits.  
8 This is because further bill payments will have been made after the initial authorization  
9 by the member for a deduction.<sup>13</sup>

10 The Commission also emphasizes that, in soliciting a pre-authorization from the  
11 member, the cooperative must comply with the voluntariness requirements set out at 11  
12 CFR 114.5(a)(1)-(5). These include informing the solicitee of the political purposes of  
13 ACRE, that the solicitee is free to contribute more or less than any suggested guideline,  
14 that the solicitee will not be favored or disadvantaged by reason of the amount of the  
15 contribution or the decision not to contribute, and that the solicitee is free to contribute or  
16 refuse to contribute without reprisal.<sup>14</sup> 11 CFR 114.5(a)(2), (3), and (4).<sup>15</sup>

17 This response constitutes an advisory opinion concerning the application of the  
18 Act and Commission regulations to the specific transaction or activity set forth in your  
19 request. See 2 U.S.C. §437f.

20 Sincerely,  
21 Darryl R. Wold  
22 Chairman

23 Enclosures (AOs 1999-3, 1997-9, 1990-4, and 1986-7)

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<sup>12</sup> Where the donor pays less than the combined amount of the electric bill and the ACRE contribution, the donor must also provide a statement to the local cooperative, with each such payment, that specifies the amount designated for the ACRE contribution.

<sup>13</sup> The bylaws of SMEC and REC provide for the joint membership of two persons living in the same household (e.g., husband and wife). SMEC Bylaws, Section 1.03; REC Bylaws, Article I, §3. With respect to contributions made in combination with bill payments and contributions by capital credits, the contribution will be construed as made by the person (or persons) who signed the pre-authorization, but there are certain conditions necessary to avoid contributions in the name of another or to ascertain who is making the contribution. See 2 U.S.C. §441f; 11 CFR 110.4(b), 104.8(c), and 110.1(k)(1); see also 11 CFR 103.3(b)(3).

<sup>14</sup> The right to refuse to contribute includes the right to revoke, or modify the amount of, an authorization for deduction at any time (e.g., from the returned capital credits). See, e.g., Advisory Opinion 1999-3.

<sup>15</sup> ACRE must ensure that the members' authorizations for both types of contributions are preserved in accordance with 11 CFR 104.14(b) and 102.9(c). See, e.g., Advisory Opinion 1999-3.